



POLICE DEPARTMENT

March 8, 2010

MEMORANDUM FOR: Police Commissioner

Re: Detective Michael Fischer
Tax Registry 917629
115 Precinct Detective Squad
Disciplinary Case No. 84253/08

The above-named member of the Department appeared before me on December 9, 2009, charged with the following:

1. Said Detective Michael Fischer, assigned to 115th Precinct Detective Squad, on or about and between August 14, 2007 and May 15, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said detective did register and insure a [REDACTED] Ford [REDACTED], New York registration [REDACTED], at a location known to this Department, Suffolk County, when in truth and fact said Detective resides at a location known to the Department, [REDACTED] County. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Lisa Bland, Esq., Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent is a 13-year member of the Department currently assigned to the 115 Precinct Detective Squad. He testified that he has been assigned to the squad for the past three years. Aside from this matter, the Respondent has never been the subject of disciplinary charges or the subject of a substantiated CCRB case. He stated that in his career, he has received ten Meritorious Police Duty Medals, seven Excellent Police Duty Medals and a Commendation. He explained that the Commendation occurred three or four years ago, prior to him becoming a detective. He helped to set up a burglary operation in a jewelry store resulting in the arrest of numerous people. To become a detective, the Respondent stated that he went through an interview process, was recommended by his supervisor and then spent approximately 18 months on probation while he performed investigative work in the 115 Detective Squad.

The Respondent testified that he grew up on [REDACTED] in [REDACTED], New York on [REDACTED], which is in [REDACTED] County. His [REDACTED] currently live at that location. He moved from that location to [REDACTED] in [REDACTED] County in 2004. The Respondent said that aside from going to college, those were the only two addresses that he maintained. The Respondent recalled that in 1996 he purchased a 1 [REDACTED] Nissan [REDACTED]. He registered that vehicle at the [REDACTED] address because that was his residence at the time. He stated that he moved to the [REDACTED] location but did not plan for that to be a permanent move. He explained that he wanted to move closer to work so he rented temporarily. His plan was to purchase a house, but because of the market, he extended his time as a renter. He further explained that

currently he is in the process of buying a house in the same cooperative location where he rents.

The Respondent stated that when he moved to [REDACTED], he took his Nissan with him. In 2005, he purchased a [REDACTED], which is the vehicle noted in his pending Charge and Specification. The Respondent said that he insured the [REDACTED] at the [REDACTED] address in [REDACTED], New York. He testified that he insured it there because that is where the [REDACTED] was maintained. He kept the Nissan with him in [REDACTED]. Things changed on August 14, 2007 when he donated the Nissan to charity. The Respondent presented a tax receipt for donation of the 1 [REDACTED] Nissan [REDACTED] (See Respondent's Exhibit [RX] A.).

After August 14, 2007, the Respondent testified that the [REDACTED] became his primary vehicle and he brought it from [REDACTED] to [REDACTED]. He stated that he did not change the insurance on the [REDACTED] to [REDACTED] because the move to [REDACTED] was a temporary one. He said that the majority of his bills still went to the [REDACTED] address including his cell phone bill, his Visa bill, and his bank statements. He noted that his 401K and 457 statements still go to the [REDACTED] address with his [REDACTED] listed as the beneficiaries. The Respondent said that in 2007, he frequently traveled to [REDACTED] on his days off and also saw his brother who lived out there.

The Respondent testified that there was another reason why he had reservations about his car registration. He stated that in 2005, he was involved in a burglary matter and he later learned that the defendants were involved in the mob. He did not want to maintain his registration at the [REDACTED] address so he attempted to get a [REDACTED] post office box (P.O. Box). The boxes were filled, so he attempted to get a [REDACTED]

P.O. Box and did. The Respondent said that he learned from the Department during an Official Department Interview that the [REDACTED] P.O. Box would be a problem, so he later was able to secure a P.O. Box in [REDACTED] and that is where his [REDACTED] remains registered to this date.

Although the Respondent changed his registration to reflect a [REDACTED] address, he did not amend his insurance policy to reflect the fact that the [REDACTED] was being kept in [REDACTED]. He stated that it was not until August 27, 2008 when he was advised that he was in violation of the Department rules that he changed his insurance. He said that it was never his intention to mislead the Department. Nor did he intend to defraud the insurance company by preventing them from receiving an increased rate by keeping his car insured in [REDACTED] County when, in reality, he kept the car in [REDACTED]. The Respondent said that he notified State Farm Insurance, who sent him a letter and he paid the difference that was owed. He stated that he still has his [REDACTED] insured with State Farm as well as a boat that he keeps out on [REDACTED] County.

During cross-examination, the Respondent acknowledged that from 2004, the [REDACTED] address in [REDACTED] became his primary residence listed with the Department. He admitted that he submitted a change of address to the Department to reflect this change. The Respondent agreed that in August 2007, until he had an Official Department Interview, he kept his car insured at his parent's address in [REDACTED] County; even though it was his primary vehicle that was kept in [REDACTED] County. He explained that he lived in [REDACTED] County with his [REDACTED] for 35 years and considered that to be his other home.

The Respondent acknowledged that he took part in a case in 2005 which involved the Queens District Attorney's Office. He also admitted that individuals involved were part of organized crime. The Respondent denied receiving any threats from any of the individuals involved in the case. He also denied that anyone from the District Attorney's Office advised him to change his registration to a P.O. Box. He acknowledged that that was a decision he made on his own. He admitted that by insuring his vehicle in [REDACTED] County rather than at his primary residence in [REDACTED] he received a financial benefit. He estimated the savings to be between \$100.00 and \$200.00.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on July 18, 1996. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has pleaded guilty to registering and insuring his Ford [REDACTED] in [REDACTED] County when he resided in [REDACTED] County. The sole issue is penalty. The Department has recommended a penalty of 10 vacation days.

Evidence adduced at trial established that the Respondent had moved from his family home in [REDACTED], [REDACTED] after residing there for 35 years. In 2004, he rented an apartment in [REDACTED] and moved from the family home. Although the Respondent testified that the move was temporary, he remained at his cooperative apartment in [REDACTED] through 2005, 2006, 2007, and 2008, up until the present. The

Respondent testified that he plans to buy a cooperative apartment in the same area where he is renting. Initially, the Respondent had two cars, a [REDACTED] he kept at his parent's home on [REDACTED] and a [REDACTED] kept in [REDACTED]. In 2007, he donated the Nissan to charity and brought the [REDACTED] to [REDACTED].

The Respondent acknowledged that from August 2007 through May 15, 2008, he continued to insure his [REDACTED] at his parent's address despite the fact that his residence was in [REDACTED] and that he had informed the Department that he had moved to [REDACTED] when he filed the forms which indicated such. In mitigating this matter, the Respondent raised a series of defenses. He stated that he still had mail going to his parent's house and his move to [REDACTED] was temporary. But he never testified that his intention was to move back to [REDACTED] County. In fact, he lived in [REDACTED] from 2004 until the present and is planning to buy a cooperative apartment where he currently rents. He also argued that he did live in [REDACTED] at one time for 35 years and still frequently visits [REDACTED] County. But this still had nothing to do with where the Respondent would be primarily storing and utilizing his car that he insured with State Farm Insurance Company.

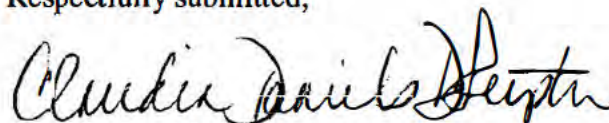
The Respondent contended that in 2005 he was involved in a burglary case where the defendants had ties to organized crime. However, the Respondent was never threatened by the defendants, he was never advised by the District Attorney's office as to where to insure his vehicles, and the gravamen of the charge against him commence in 2007, two years after the burglary case. Consequently, I do not consider this a mitigating factor.

The Respondent also stated that it was an oversight that he had not changed his insurance from his parent's home on [REDACTED] to his residence in [REDACTED]. It seems to

the Court that when the Respondent went to [REDACTED] to bring the [REDACTED] for use in [REDACTED] he should have known to contact the insurance company. He did receive a financial benefit by insuring his car in [REDACTED] County instead of [REDACTED] for the eight-month period. The Respondent testified and it was not disputed that he benefited in the range of \$100.00 to \$200.00. However, given the fact that the Respondent has a good service record with the Department; that the benefit he received was small; that he repaid the benefit; that the time period for the misconduct was short; and that he acknowledged his guilt by pleading guilty and stating that his mistake was an oversight, there are mitigating circumstances here.

Accordingly, I recommend that the Respondent forfeit seven vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

APPROVED
JUL 12 2010

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE MICHAEL FISCHER
TAX REGISTRY NO. 917629
DISCIPLINARY CASE NO. 84253/08


In 2005, the Respondent received an overall rating of 4.5 "Above Highly Competent" on his annual performance evaluation. In 2007 and 2008, he received a rating of 4.0 "Highly Competent." The Respondent has received eight Excellent Police Duty Medals, 13 Meritorious Police Duty Medals and one Commendation in his career to date.

[REDACTED]

[REDACTED]

The Respondent has no prior formal disciplinary record.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials